

01-25-06

TPW
1636
H
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Noteborn et al.

Serial No.: 10/083,849

Filed: October 19, 2001

For: MODIFICATIONS OF APOPTIN

Confirmation No.: 4522

Examiner: T. McKelvey

Group Art Unit: 1636

Attorney Docket No.: 2906-4996.1US

NOTICE OF EXPRESS MAILING

Express Mail Mailing Label Number: EL995987440US

Date of Deposit with USPS: January 24, 2006

Person making Deposit: Tim Palfreyman

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Communication mailed October 19, 2005 has been received and reviewed. Claims 5-7 and 26 are pending in the application. Applicants were required to elect from 6 species of the claimed invention. Applicants elect, without traverse, Species 3, *i.e.* functional equivalents of Apoptin comprising replacement of a threonine located at the position 108 only. Claims 5-7 and 26 are readable upon the elected species.

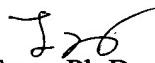
The Communication states that "(c)urrently, no claim is generic". (Page 2, 3rd line from the bottom). Applicants respectfully submit that claims 5-7 are generic to Species 1-6 designated in the Communication. Claim 5 recites "(a) vector comprising a nucleic acid encoding Apoptin or functional equivalent and/or functional fragment thereof, which Apoptin can be

phosphorylated". However, claim 5 does not specify a particular species of a functional equivalency. Claim 6 and 7 recite a gene delivery vehicle and a host cell, respectively, comprising the vector in claim 5. Therefore, claims 5-7 are generic and readable on the elected species.

The applicants hereby petition for a three month extension under 37 C.F.R. § 1.136(a). The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment to deposit account 20-1469.

If questions should remain after consideration of the foregoing, the Examiner is kindly requested to contact applicants' agent at the address or telephone number given herein.

Respectfully submitted,


Li Feng, Ph.D.
Registration No. 57,292
Attorney for Applicants
TRASKBRITT, P.C.
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: January 24, 2006

LF/f

Enclosure: Petition for Extension of Time

Check in \$1,020

Document in ProLaw